

McNamara Declaration

Exhibit 13

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

4 HACHETTE BOOK GROUP, INC.,
et al..

Plaintiff,

v. Civil Action No. 1:20-CV-04160-JGK

INTERNET ARCHIVE, et al.,

Defendant.

11 VIDEO CONFERENCE VIA ZOOM DEPOSITION OF

12 LAURA GIBBS

13 | Page March 24, 2022

14 11:04 a.m.

15 Chapel Hill, North Carolina

23 Reported by: Audra M. Smith, RPR, FCRR

24 Video by: Sean Lowther

25 APPEARANCES OF COUNSEL

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1 A I don't know anything about library
2 e-books. I own a Kindle version of this book so I
3 know it's available as an e-book because that's how
4 I read it. I read the Kindle version.

5 MR. BROWNING: Clint, could you put up tab
6 12, please?

7 CONCIERGE TECH: Exhibit 8 has been
8 marked.

9 MR. BROWNING: I apologize, again, this
10 has come out tiny, let me know if you can get
11 it in an original form.

12 (Exhibit Number 8 was identified.)

13 A Oh, man, these screenshots -- because,
14 yeah, the images are definitely getting degraded.
15 Let me download it again because that seems to be
16 working.

17 BY MR. BROWNING:

18 Q Yeah.

19 A Okay. The image I'm looking at says
20 OverDrive.

21 Q Yes. Let me just make an introduction.
22 This is -- this is Gibbs Exhibit 8. It is a copy of
23 a web page I captured yesterday on overdrive.com for
24 the book Every Tongue Got to Confess.

25 My first question to you, Laura, is: Do

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1 you know what OverDrive is?

2 A I actually don't.

3 Q Okay. I'm going to represent to you that
4 OverDrive is a company that licenses books, like
5 Every Tongue Got to Confess from the publishers, and
6 then makes a platform available to libraries which
7 can then purchase electronic versions of the books
8 and lend them to patrons. Just as a bit of
9 background.

10 Do you see here where it says -- there's a
11 blue box, and the heading is Title Found At These
12 Libraries. Then it says below that, Davidson County
13 Public Library System, Thomasville Library, North
14 Carolina Digital Library.

15 Do you know what the North Carolina
16 Digital Library is?

17 A Actually, I don't. I know a lot about
18 libraries in Oklahoma, strangely enough, but not so
19 many here.

20 Q They actually have an Oklahoma Digital
21 Library with this book as well. Do you know about
22 e-book lending in Oklahoma?

23 A No. As I said before, I don't borrow
24 e-books from libraries. I buy them. So I have a
25 Kindle of this book. I've never looked for an

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1 opportunity to borrow an e-book.

2 Q I'm going to represent to you that if you
3 click through one of these links and you're a member
4 of the North Carolina Digital Library, you will be
5 able to borrow the book.

6 MR. BROWNING: And to illustrate that,
7 Clint, could you do me a favor and please
8 introduce tab number 13.

9 CONCIERGE TECH: Exhibit 9 has been
10 marked.

11 (Exhibit Number 9 was identified.)

12 BY MR. BROWNING:

13 Q Let me know if and when you can see it,
14 please. Laura.

15 A Now, it's North Carolina Digital Library
16 and it's got a gold banner.

17 Q Great. This is Gibbs Exhibit 9. It's
18 another web page from the North Carolina Digital
19 Library's platform on OverDrive. It's the page
20 Every Tongue Got to Confess. There's a big button
21 there that says "Borrow" underneath saying "only one
22 copy available."

23 Laura, I'm going to represent to you two
24 things. The first is that members or patrons of the
25 North Carolina Digital Library can borrow this

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1 e-book by clicking that button for free, and that
2 they will be able to read an electronic version of
3 Every Tongue Got to Confess.

4 I'm also going to represent to you that
5 Zora Neale Hurston's estate has authorized this
6 version of the book and receives payment each time a
7 library purchased it.

8 I assume you don't have any knowledge of
9 that, but is that correct?

10 A From my understanding what you're saying,
11 and so now I understand something about OverDrive
12 and e-books at libraries. I did not know this
13 before.

14 Q Now that you know this, would you consider
15 linking to or putting a link to this authorized
16 e-book in your blog post?

17 A Well, I'm not sure why I would do that. I
18 mean, there are lots of ways to acquire books,
19 right? You can acquire them from your local
20 library, which is great. You can acquire them from
21 your local libraries. There's physical books or you
22 gave this example of an e-book. You can buy new
23 copies of books. You can buy e-books from Kindles
24 or you can buy used copies of books. I'm not in the
25 business of being a collector of all the links for

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1 all the ways you can gain access to a book.

2 The task I've taken on is to tell people
3 what they can find at the Internet Archive, which
4 includes public domain books and books available by
5 controlled digital lending. They're not e-books
6 like this. They don't have all the conveniences. I
7 assume, this is an e-book that renders nicely on
8 people's cell phones and on and on the way e-books
9 do. But I'm not a cataloger of all the book links
10 in the world. So, no, I have learned about
11 OverDrive from you. I'm not going to be adding
12 those links to my blogs.

13 Q Great. We were discussing before your
14 rights over your books as an author, and one of the
15 hypothetical examples we were discussing was your
16 rights to control the use of your books on
17 standardized test websites. Do you remember that?

18 A Right. We talked about different kinds of
19 derivative works and reuse, yes.

20 Q And if Zora -- with that in mind, if Zora
21 Neale Hurston's estate asked the Internet Archive to
22 remove its controlled digital lending copy of Every
23 Tongue Got to Confess, do you think Internet Archive
24 should do that?

25 MS. LEE: Objection, form.

1 A Right. E-books are not a particular
2 interest of mine. For the most part, there aren't
3 e-books available for the kinds of books I mostly
4 work on. I think it's great that there's a Kindle
5 edition of, I think, probably every one of Zora
6 Neale Hurston's published books now, and that's one
7 way for people to get access to those books. And if
8 they're available through the libraries, too, I
9 think that's great. I love libraries, so that's
10 good news.

11 Q My question to you is: As you sit here
12 today, does it matter to you whether you use the
13 Internet Archive version of the Zora Neale Hurston
14 title or the OverDrive version of the Zora Neale
15 Hurston title?

16 MS. LEE: Objection, form.

17 A Right. My goal is to write a blog that
18 reaches a wide audience, and so by providing a link
19 to the Internet Archive version of a book, the scan
20 of the physical book, et cetera, et cetera, I'm
21 confident that anyone reading my blog will find that
22 link potentially useful.

23 At the same time, I'm very glad for
24 anybody reading my blog who goes to their local
25 bookstore or goes to their local library or who

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1 borrows a book from their neighbor, however people
2 get books, is up to them. My goal is to write a
3 blog that's useful to a wide range of readers. Not
4 all my readers are in North Carolina and not all my
5 readers are even in the United States.

6 BY MR. BROWNING:

7 Q And so is it correct to say that Internet
8 Archive is more broadly accessible -- I'm trying to
9 find a shorthand for the terms you just gave me.
10 Would it be accurate to say that the Internet
11 Archive's books are more broadly accessible than the
12 alternatives you just listed?

13 MS. LEE: Objection, form.

14 A Right. I mean, what you have specifically
15 shown here is that as someone who's able to go get a
16 Chapel Hill library card, I would be able to access
17 the North Carolina Digital Library, and because of
18 that, I would be able to borrow that e-book. To me,
19 that's an entirely separate question from what the
20 Internet Archive is doing. The Internet Archive is
21 reaching potentially a broader audience than the
22 North Carolina Digital Library.

23 BY MR. BROWNING:

24 Q And when you are making a decision or
25 determination on which electronic platform to

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1 STATE OF NORTH CAROLINA)

2 COUNTY OF FORSYTH)

3 REPORTER'S CERTIFICATE

4 I, Audra Smith, Registered Professional Reporter in
5 and for the above county and state, do hereby certify that the
6 deposition of the person hereinbefore named was taken before me
7 at the time and place hereinbefore set forth; that the witness
8 was by me first duly sworn to testify to the truth, the whole
9 truth and nothing but the truth; that thereupon the foregoing
10 questions were asked and the foregoing answers made by the
11 witness which were duly recorded by me by means of stenotype;
12 which is reduced to written form under my direction and
13 supervision, and that this is, to the best of my knowledge and
14 belief, a true and correct transcript.

15 I further certify that I am neither of counsel to
16 either party nor interested in the events of this case.

17 IN WITNESS WHEREOF, I have hereto set my hand
18 this 29th day of March, 2022.

19 
20

21 Audra Smith, RPR, FCRR

22 Notary Number: 201329000033

23 Commission Expires: June 26, 2025

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